

Summary of Changes to Florida Code Required Prior to CWA 404 Delegation

Issue #	CWA Reg Requirement (40 CFR 233.41(a)(3))	Current Florida Statute and its shortcomings	Required amendments
1	<p>Possess authority to prosecute persons who “willfully or with criminal negligence” discharge fill to WOTUS w/o or in violation of a permit.</p> <p>With regard to these violations as well as the false statement/tampering crimes described below, state law must impose burden of proof and degree of knowledge or intent “no greater than the burden of proof or degree of knowledge or intent EPA must bear when it brings an action.” (40 CFR 233.41(b)(2))</p>	<p>Florida’s CWA statute contains three crimes: two which require proof of harm (felonies for willful violations, misdemeanors for heightened negligence violations) and a third which requires proof of willfulness.</p> <p>(1) Felony penalties, inc. a \$50K fine, for (a) willful violators who (b) cause “harm or injure human health or welfare, animal, plant, or aquatic life or property.” FS373.430(1)(a) & (3)</p> <p>(2) Misd. penalties, inc. a \$5K fine, for violators whose “reckless indifference or gross careless disregard” causes “harm or injure[s] human health or welfare, animal, plant or aquatic life or property.” 373.430(1)(a) & (4)</p> <p>(3) Misd. penalties, inc. \$10K fine, for willful violations of any sort, inc. DWOP, permit violations, false statements. 373.430(1)(b)&(c) & (5)</p> <p>Does not authorize prosecution of negligent violations with a burden of proof and degree of knowledge or intent no greater than that borne by EPA (i.e., simple negligence).</p>	<p>None currently.</p> <p>In approving Idaho’s 402 program, EPA indicated that any state negligence standard (whether simple negligence or gross negligence) meets the regulatory requirements to assume the 404 program. EPA’s approval is currently in litigation.</p>
2	Possess authority to obtain criminal fines of “at least \$10,000 per day” for the two above-referenced violations	<p>Does allow imposition of \$10K fine against willful violators. 373.430(1)(b)&(c) & (5)</p> <p>As regards negligent violations, does not authorize imposition of \$10K fine. 373.430(1)(a) & (4)</p>	Authorize imposition of \$10K fine for negligent violations.
3	Possess authority to prosecute persons who make knowing false statements in required records or tampers with monitoring devices/methods	Does not authorize criminal prosecution for knowing false statements or knowingly tampering. Requires proof of willfulness. 373.430(1)(b)&(c) & (5)	Authorize criminal prosecution of knowing false statements and/or knowingly tampering with a monitoring method.
4	Possess authority to obtain criminal fines of “at least \$5,000 for each instance of [the above-referenced] violation.”	See above	Authorize fines of at least \$5K for violation referenced above.